

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

MICHAEL SCOTT	§	
TDCJ-CID #683064	§	
v.	§	C.A. NO. C-08-086
	§	
CARLOS RODRIGUEZ	§	

**MEMORANDUM AND RECOMMENDATION TO DISMISS**

Plaintiff Michael Scott filed this action pursuant to 42 U.S.C. § 1983. (D.E.

1). Plaintiff filed a motion to proceed in forma pauperis. (D.E. 2).

**DISCUSSION**

Plaintiff is currently incarcerated in the Michael Unit located in Tennessee Colony, Texas. He is a litigant who has accumulated in excess of three strikes under 28 U.S.C. § 1915(g), and is therefore, barred from proceeding in forma pauperis in any civil action or appeal filed while he is in prison unless he shows that he is under imminent danger of serious physical injury.<sup>1</sup> He makes no such

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<sup>1</sup> Scott v. Bush, et al., No. 6:97cv005 (E.D. Tex. May 12, 1997) (first strike for a frivolous filing); Scott v. Layton, et al., No. 6:97cv332 (E.D. Tex. Mar. 5, 1998) (second strike for a frivolous filing); Scott v. Hunter, et al., No. 1:99cv003 (N.D. Tex. Jan. 11, 2000) (third strike for a frivolous filing); Scott v. Morgan, et al., No. 1:98cv151 (N.D. Tex. May 25, 2000) (dismissed for three strikes pursuant to § 1915); Scott v. Stamps, et al., No. 2:99cv257 (N.D. Tex. Aug. 8, 2000) (dismissed for three strikes pursuant to § 1915); Scott v. FNU, No. 1:99cv216 (N.D. Tex. Nov. 16, 2000) (dismissed for three strikes pursuant to § 1915); Scott v. Tex. Dep't of Crim. Justice, Clements Unit, et al., 70 Fed. Appx. 235, 2003 WL 21744387 (5th Cir. July 28, 2003) (per curiam) (unpublished) (appeal dismissed for three strikes pursuant to § 1915); Scott v. Groomer, et al., No. 2:02cv128 (N.D. Tex. 2003) (fourth strike for a frivolous filing); Scott v. Groomer, et al., 79 Fed. Appx. 48, 2003 WL 22426655 (5th Cir. Oct. 22, 2003) (per curiam) (unpublished) (fifth strike for a frivolous filing).

assertion or showing in his current complaint. See Banos v. O'Guin, 144 F.3d 883, 885 (5th Cir. 1998) (per curiam).

In his action, plaintiff names as defendant Carlos Rodriguez a psychologist at the McConnell Unit. (D.E. 1, at 12). Specifically, he alleges that defendant retaliated against his right to access to the courts by having him transferred to a psychiatric unit because of plaintiff's litigation activities Id. at 14. Plaintiff was incarcerated at the McConnell Unit from June 3, 2004 until September 21, 2006. Id. During that time at the McConnell Unit, he alleges that he filed approximately 96 civil lawsuits. Id.

This Court must assess whether plaintiff is exposed to imminent danger of serious injury at the time that he filed his motion to proceed in forma pauperis. Choyce v. Dominguez, 160 F.3d 1068, 1071 (5th Cir. 1998) (per curiam) (citing Banos, 144 F.3d at 884-85). Nothing in his complaint indicates that he is facing a threat of imminent danger.

The Fifth Circuit has held that an inmate who has three or more strikes pursuant to § 1915(g) may not proceed in forma pauperis in any new civil actions. Adepegba v. Hammons, 103 F.3d 383, 388 (5th Cir. 1996). Plaintiff has more than three strikes for frivolous actions. Accordingly, it is respectfully recommended that this action should be dismissed and that his application to proceed in forma pauperis be denied pursuant to 28 U.S.C. § 1915(g).

**RECOMMENDATION**

Plaintiff has over three strikes pursuant to § 1915(g). Accordingly, it is respectfully recommended that his action be dismissed. It is also respectfully recommended that his motion to proceed in forma pauperis, (D.E. 2), be denied.

Finally, it is respectfully recommended that, should the Court adopt this recommendation, the dismissal be characterized as one described by 28 U.S.C. § 1915(g), and that the Clerk be directed to provide a copy of the order of dismissal to: **District Clerk for the Eastern District of Texas, Tyler Division, 211 West Ferguson, Tyler, Texas, 75702, Attention: Betty Parker.**

Respectfully submitted this 20th day of March 2008.

  
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BRIAN L. OWSLEY  
UNITED STATES MAGISTRATE JUDGE

NOTICE TO PARTIES

The Clerk will file this Memorandum and Recommendation and transmit a copy to each party or counsel. Within **TEN (10) DAYS** after being served with a copy of the Memorandum and Recommendation, a party may file with the Clerk and serve on the United States Magistrate Judge and all parties, written objections, pursuant to 28 U.S.C. § 636(b)(1)(C); Rule 72(b) of the Federal Rules of Civil Procedure; and Article IV, General Order No. 2002-13, United States District Court for the Southern District of Texas.

A party's failure to file written objections to the proposed findings, conclusions, and recommendation in a magistrate judge's report and recommendation within TEN (10) DAYS after being served with a copy shall bar that party, except upon grounds of *plain error*, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. Douglass v. United Servs. Auto. Ass'n, 79 F.3d 1415 (5th Cir. 1996) (en banc).